Contractors Accompanying The Force

TSP 151-M-001

"The lack of contract training for operational commanders, customers, and others with responsibilities to use, manage, and oversee logistics support contracts has adversely impacted the use of such contracts to support deployed forces in contingency operations. Commanders and other senior leaders must understand that they have a key role in identifying requirements, assuring that the contractor works in a cost effective manner, and evaluating contractor performance. Without such an understanding the government's ability to control contract costs and ensure quality service at the best possible price is severely limited."

GAO Report, GAO-04-854, 08/2004

DOD's Extensive Use of Logistics Support Contracts Requires

Learning Objectives

- ✔ **TLO: Describe User Responsibilities for Contractors Accompanying the Force**

- ✔ **ELO A: Identify the role of contractors in support of Army operations**
- ✔ **ELO B: Explain how contractors are integrated into Army operations**
- ✔ **ELO C: Explain user responsibilities for requesting and overseeing contract support**

ELO A

Identify the role of contractors in support of Army operations

Not A New Concept …

Transportation
Food Service
Reconnaissance
Maintenance

Laundry
Sanitation
Shower
Service

Medical
Construction
Security
Intelligence

Contractors Are Critical Force Multipliers on the Battlefield

SIMPLE SERVICES — Deploying Longer / Nation Building — COMPLEX SERVICES

1776
Civil War
WW I
WW II
Korea
Vietnam
Desert Shield/Storm
Kosovo
Bosnia
Afghanistan
Iraq
200
5

Employment of Contractors has adjusted to Changes in Doctrine/Environment

Throughout United States History,
We Have Utilized Contractors
in Support of Our Military Forces

Contractors as a Force-Multiplier

- **Why do we use Contractors?**
  - **To maximize number of combat Soldiers in operations where military force size is constrained**
  - **To help to reduce OPTEMPO – Offset burden on Army force structure, especially on RC units**
  - **To obtain low-density high-tech skills in support functions**
  - **Contractor support is more than just logistics; it spans the spectrum of combat support (CS) and combat service support (CSS) functions**
  - **Applicable to all Army operations, to include offense, defense, stability, and support**

Contractors Accompanying the Force

- **Provide supplies or services for $$**
- **Can perform almost anything except inherently governmental functions**
- **Are commercial businesses**
- **Differ from military; not combatants**
- **Managed through contracting channels**
- **Comply with US and international law**
- **Require support**
- **Can be used in almost any location**
- **Nothing new**
- **Cannot supervise military or government civilians.**

Governing Principles

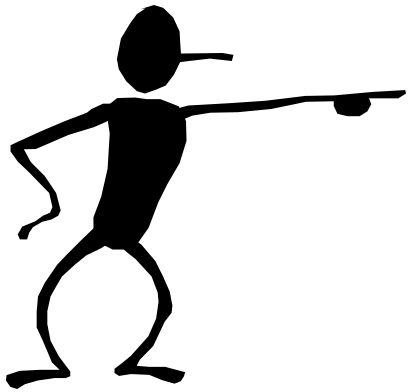
- ✔ **Force-Structure Augmentation**
- ✔ **Risk Assessment**
- ✔ **Integrated Planning**
- ✔ **Support to Customer**
- ✔ **International Agreements**

Force-Structure Augmentation

- ✔ **Enables commanders to redirect their military support units to other missions.**
- ✔ **Contractors are not intended to permanently replace Army force structure.**
- ✔ **Contingency plans must address alternate sources of support in the event the incumbent contractor cannot perform an identified essential service.**
- ✔ **Commanders must weigh the risk of when and where to use contractors.**

Risk Assessment

I should put contractors wherever I require them, but I need to balance the Risk and Cost!



<u>METT-TC</u>

- ✔ Support Requirements
- ✔ Ability to Protect
- ✔ Cost to Protect
- ✔ Nature / Extent of Threat

(Effects of Non-linear Battlefield and Asymmetric Warfare)

Integrated Planning

- **Must be considered and integrated in the deliberate or crisis action planning process.**
- **Identifies (at a minimum):**
  - **Contractor involvement**
  - **How contractor support is provided**
  - **Where contractor support is provided**
  - **Army responsibilities to support the contractor**
  - **Contingencies in the event contractor support fails**

Contract terms & conditions must consider support to the customer:

- ✔ **Must provide at least same quality of support that is provided by military units.**
- ✔ **Contractor must be integrated to minimize operational disruptions.**
- ✔ **Contractors must adhere to military systems and procedures when interfacing with the Army.**
- ✔ **Contractors will not compromise sensitive or classified operational information.**
- ✔ **Contractors cannot supervise military or government civilian personnel.**

International Agreements

- ✔ **Is there a Status of Forces Agreement (SOFA)?**
- ✔ **Is viable HN support available/required?**
- ✔ **Does the SOFA address contractor employees' legal status and customs requirements?**
- ✔ **Does SOFA restrict sources of supplies and services?**
  - ➤ **Inter- and intra-country travel**
  - **Number of and types of contractors**
  - **Equipment**

Contract Terminology

Contracting Terms

Contract: An agreement, either oral and written, between responsible parties, for an act or forbearance of an act in exchange of consideration. Creates a mutually binding legal relationship between the agreeing parties: the Army and a business. Obligates the seller (the business) to furnish the supplies or services (including construction) and the buyer (the Army) to pay for them. Includes all types of commitments that obligate the Government to an expenditure of appropriated funds and that, except as otherwise authorized are in writing. (FAR 2.101)

Contracting: Purchasing, renting, leasing, or otherwise obtaining supplies or services from nonfederal sources. Contracting includes description (but not determination) of supplies and services required, selection and solicitation of sources, preparation and award of contracts, and all phases of contract administration. It does not include making grants or cooperative agreements. (FAR 2.101)

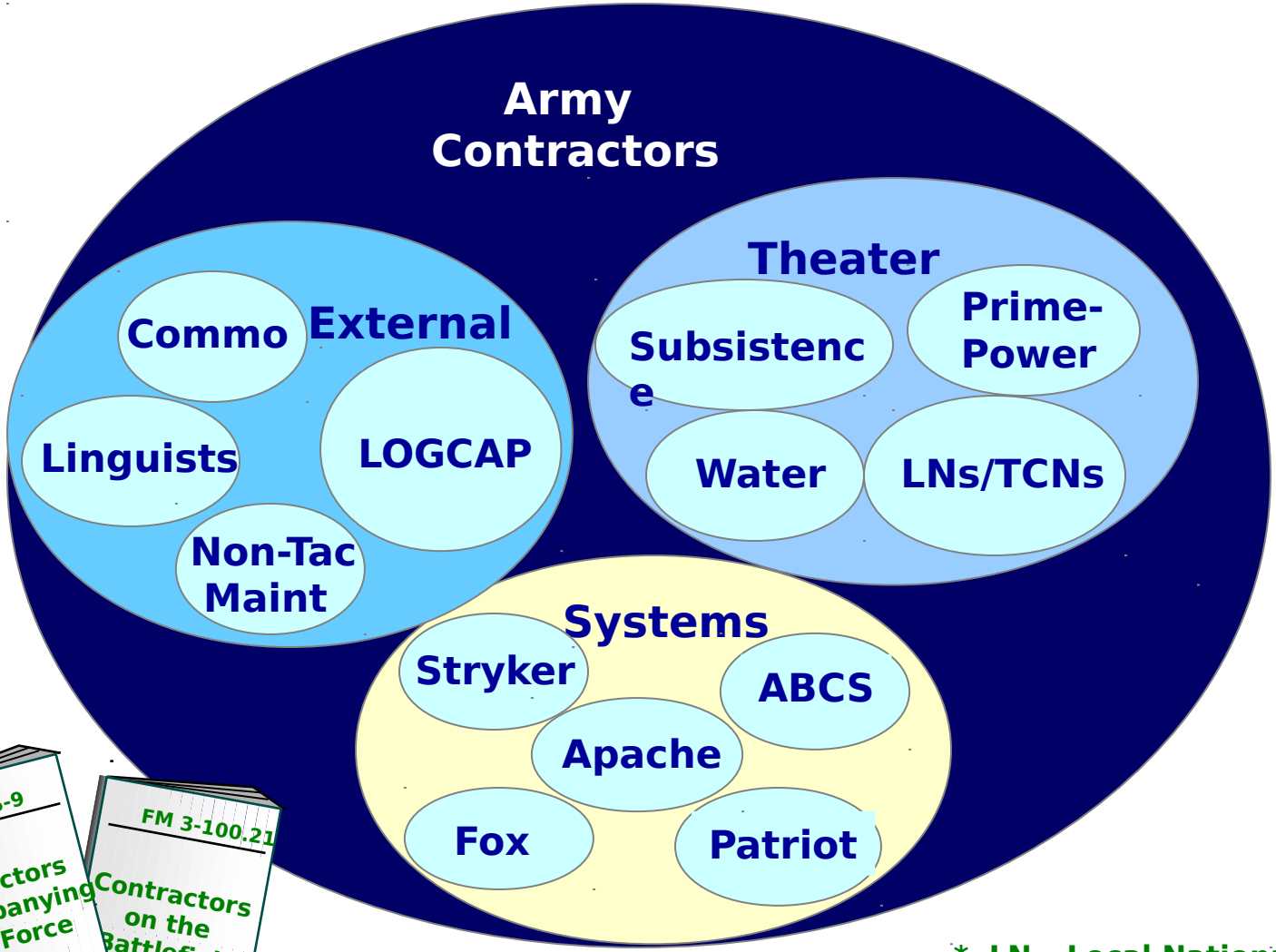
Contracting Terms (Cont)

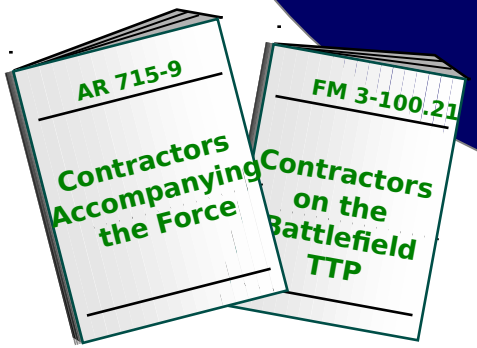
Contractor: Any individual or other legal entity that—

(1) Directly or indirectly (*e.g.,* through an affiliate) submits offers for or is awarded, or reasonably may be expected to submit offers for or be awarded, a Government contract, including a contract for carriage under Government or commercial bills of lading, or a subcontract under a Government contract; or

(2) Conducts business, or reasonably may be expected to conduct business, with the Government as an agent or representative of another contractor. (FAR 9.403)

Types of Contractors





* LN – Local Nationals
* TCN – Third Country Nationals

Contracting Terms (Cont)

Contracting Activity: An element of an agency designated by the agency head and delegated broad authority regarding acquisition functions. (FAR 2.101)

Head of Contracting Activity: The official who has overall responsibility for managing the contracting activity. (FAR 2.101)

Principal Assistant Responsible for Contracting (PARC): A senior acquisition professional who serves as an advisor to the HCA. This individual is generally Level III certified in Contracting. (CENTCOM Handbook, October 2004)

Contracting Officer: A person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. (FAR 2.101)

Contracting Terms (Cont)

Contracting Officer's Representative (COR): An individual authorized in writing by the contracting officer to perform specific technical or administrative functions. The COR does not have the authority to obligate the government. (DFARS 201.602-2) CORs are the eyes and ears of the contracting officer. Monitors the contractor's performance relative to the terms and conditions written in the contract and communicates any problems directly to the contracting officer. Does not have the authority to modify the terms and conditions of any contract.

Field Ordering Officer (FOO): An official nominated by commander, and appointed, in writing, by the contracting officer. The FOO has limited authority to purchase and obligate the government. The amount authorized is generally less than or equal to the micro purchase threshold of $2500. However, in special circumstances the amount may be higher as determined by the PARC.

Performance Work Statement (PWS): A description of the user's needs and requirements. It defines the outcomes to be achieved, not the methods for achieving them. (DLA Commercial Activities Guidebook)

Contracting Terms (Cont)

Requiring unit or activity: Identifies a specific CS or CSS requirement to support the mission. Provides contractor oversight in the AO, through the COR, to include submitting contractor accountability and visibility reports. Can be a tactical- or operational-level unit in the AO or a support organization, such as an ASA(ALT), PEO/PM or USAMC, which has identified a support requirement that affects forces in the field. Identifies the specific requirements for the support. If requirement is best satisfied by contractor support, the requiring unit prepares PWS to support contracting process. May not be organization actually receiving contractor support.

Supported unit: Organization that receives support, including contractor-provided support. May also be the requiring unit, if it initiates the request for support.

Supporting organization: Organization tasked to furnish organizational or life support to a contractor. May be supported organization, requiring unit or activity, functional organization such as a transportation unit or the USACE that provides equipment or facilities, or any other organization that possesses support capability. Responsible for providing force protection.

Contracting Terms (Cont)

Actual authority: Authority given in writing to contracting personnel (very specific). From the authority expressed in writing comes some implied authority (i.e., the authority to negotiate is implied from the expressed authority to award contracts up to $1 million).

Apparent authority: Authority that individuals derive from their position, but cannot be used in Government Contracting (i.e., the General states to the contractor that it would be nice if there were a walkway across the wet field and the contractor builds a walkway without the approval of a contracting officer).

Unauthorized commitment: Occurs when there is a purchase agreement that is not binding solely because the government representative (a Soldier or DAC) who made it lacked the authority to enter into that agreement on behalf of the government.

Review

ELO A

Identify the role of contractors in support of Army operations

ELO B

Explain how contractors are integrated into Army Operations

Planning for Contract Support

- ✔ **Planning Considerations**
- ✔ **Types of Operational Plans**
- ✔ **Government Obligations**
- ✔ **Hierarchy of Use**
- ✔ **Commander’s Guidance**
- ✔ **Acquisition Review Board**

Planning Considerations

- **Staff Estimates**
  - **Logistics needs (-) Capabilities = GAP!**
- **Early Identification of Requirements is Key:**
  - **Who**
  - **What**
  - **Where**
  - **When**
  - **How Many**
  - **To What Standard**
  - **BUT NOT “HOW”!**

Types of Operational Plans

- **Contracting Support Plan**
  - **Provides guidance on contract support and how to acquire**
  - **Operation-specific contracting procedures**
  - **Who?**
  - **Where?**

- **Contractor Integration Plan**
  - **Addresses specific contractor-related deployment, management, F/P and support requirements**
  - **Encompasses all types of contractor support**
  - **Who?**
  - **Where?**

(FM 3-100.21)

Contractor Deployment

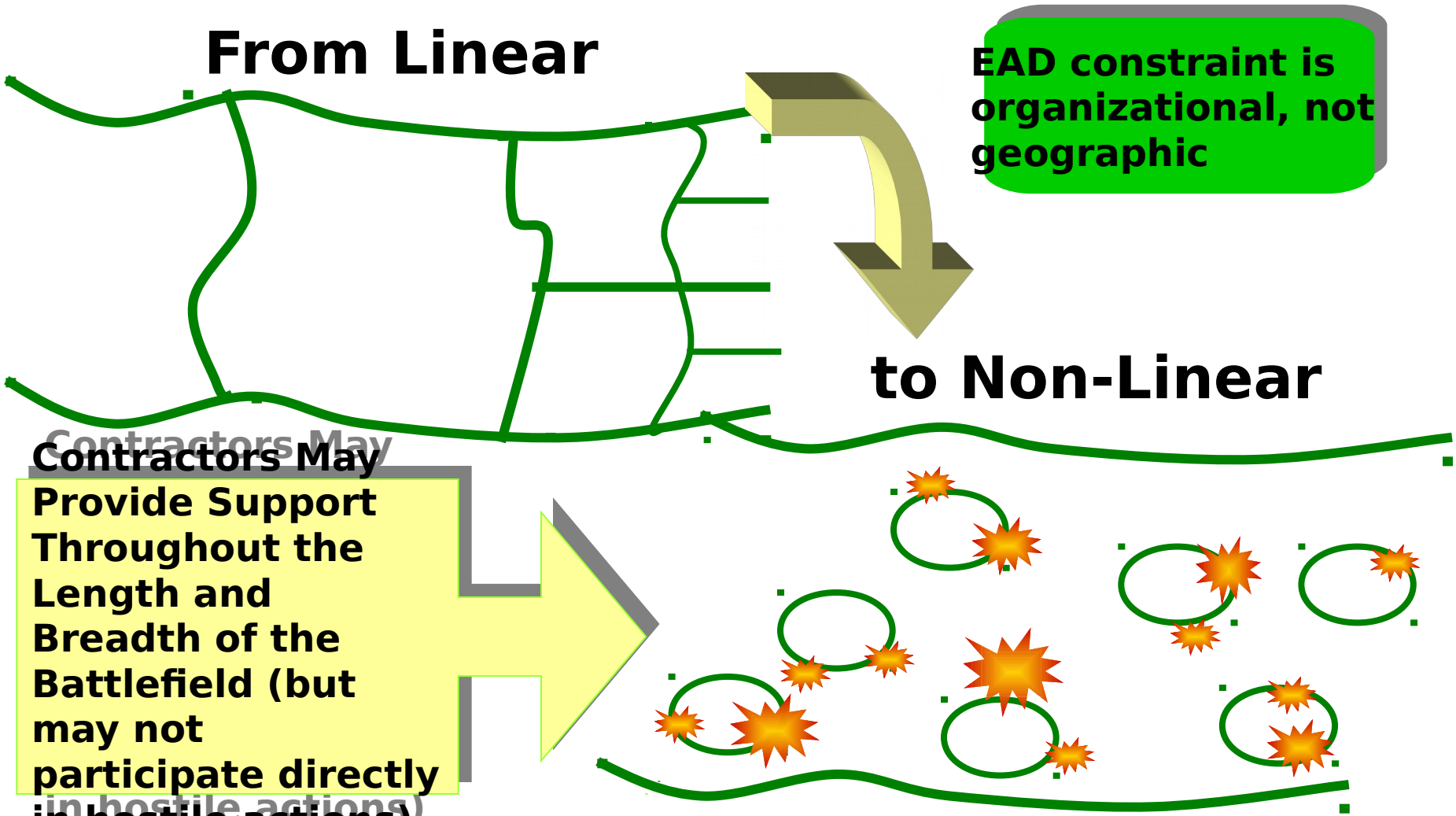
- Cost
- Risk
- Time

} Considerations

Possible Preparation for Overseas Replacement Requirements

- NBC Protection
- Dental X-Rays
- DNA
- Physical Exam
- Immunizations
- NoK Info
- Theater-Specific Training
- Use of Deadly Force
- Weapons Training

Location On The Battlefield


From Linear
EAD constraint is organizational, not geographic
to Non-Linear
Contractors May Provide Support Throughout the Length and Breadth of the Battlefield (but may not participate directly in hostile actions)

151-M-001-28

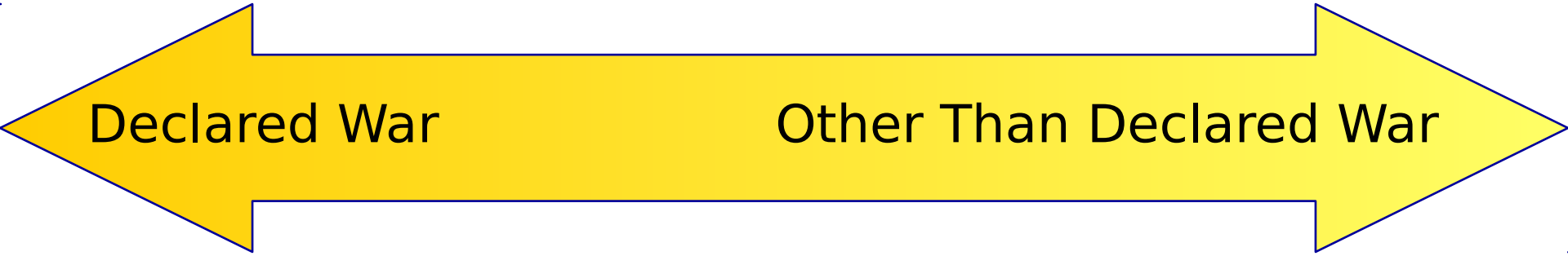
So, You Want to Contract It?

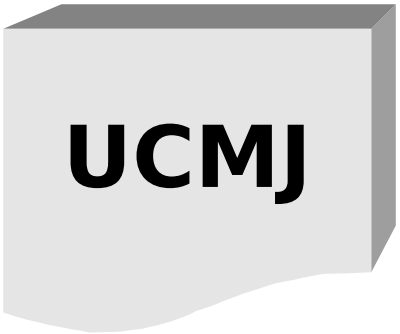
- ✔ **Quality of Life for Soldiers**
- ✔ **Risk (Hostile Environment?)**
- ✔ **Good, Fast, Cheap**
  - ➤ **Cannot have all three!**
- ✔ **Ramp-up of services**
  - **Government provides up-front services that diminish over time**
  - **Contractor ramps up services over time until full performance**
  - **Need to plan ramp-up time period for theater contractors as well which may be longer due to requirement to get security passes**
  - **ALL FUNCTIONS DO NOT TURN OVER AT ONCE!**

Government Obligations

- ✔ **Contractors Accompanying the Force (CAF)**
  - ➤ **Force Protection**
  - **Support when Forward Deployed**
  - **Contractor Accountability**
- ✔ **Government Furnished Equipment**

Criminal Jurisdiction Gap





Supreme Court Limited Jurisdiction

<u>otential Remedies</u>

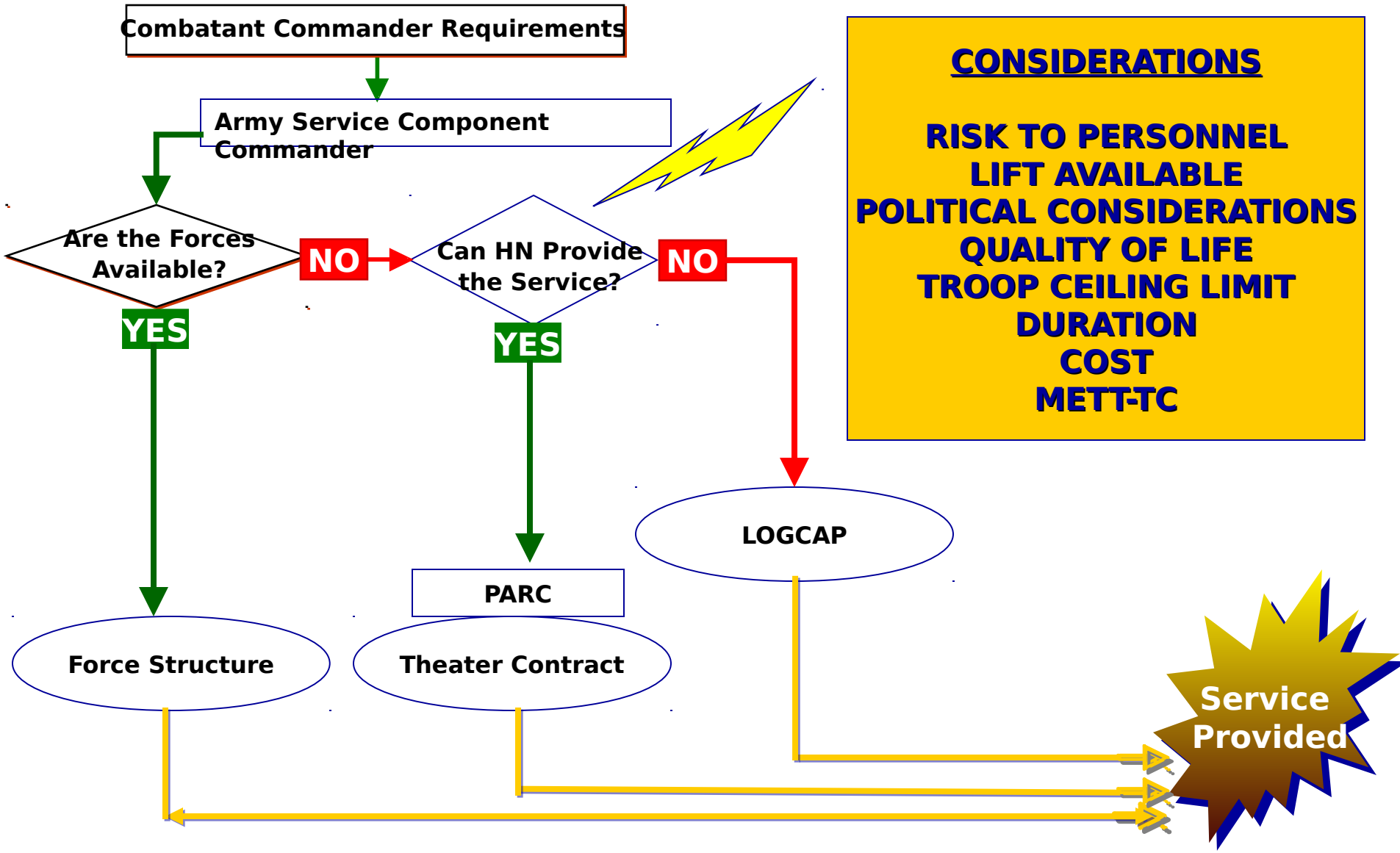
Host Nation Jurisdiction

US Military Retirees Subject to UCMJ

Military Extraterritorial Jurisdiction Act of 200

War Crimes Act of 1996

When to Use Contractors/ Hierarchy of Use



Acquisition Review Board

- **Acquisition Review Board (FM 100-10-2)**
  - **Validates Requirements**
  - **Determines Means of Support**
    - **Formalizes Hierarchy of Use**
    - **Corps of Engineers or Contingency Contracting**
  - **Funding Authorization**
  - **Can be called a variety of names:**
    - **Joint (JARB)**
    - **Coalition (CARB)**
    - **Base Camp Planning Board (BCPB)**

Review

ELO B

Explain how contractors are integrated into Army Operations

ELO C

Explain user responsibilities for requesting and overseeing contract support

Requesting Support

The Requirement Package

Inherent Government Functions

Functions so closely tied to the public interest that they MUST be carried out by Government officials/employees.

- **Examples of Inherently Governmental Functions**
  - Combat operations
  - Criminal investigations
  - Prosecutions
  - Commanding military forces
  - Foreign relations/policy
  - Hiring,directing and controlling Govt employees
  - Accountable officer
  - Budget policy
  - Collect duties and taxes
- **Examples that are NOT Inherently Governmental Functions**
  - Budget Preparation
  - Studies used in developing policy
  - Development of regulations
  - Assisting in contract management, eval of technical proposals and develop PWS
  - Provide inspection services

Performance Requirement Document

- ✔ **Services – Performance Work Statement**
  - ➤ **Performance-Based Language**
    - **Tells the contractor what to do, but not how to do it**
    - **Not requirements-based language, performance-based language required**
    - **Services only – not supply**
- ✔ **Supply – DA Form 3953**
  - **Still describe the performance you are seeking, not how to meet it**
- ✔ **Remember – you set the requirements, but you cannot select the contractor**

Contract Language (Supply)

Requirements Language

- **Electric drip coffee maker with 2 glass carafes of 12- cup capacity, 2 hot plates for keeping the coffee hot and at least a 4-foot electric cord. Coffee maker should equal General Electric model 2150A.**

Performance-Based Language

- **Contractor shall provide an electric unit that uses 120V AC current and is capable of making coffee and keeping hot until needed. Capacity to keep at least 12 cups of coffee ready for consumption without having to wait for the coffee to brew.**

Contract Language (Service)

Requirements Language

- **The contractor shall provide 50 trucks per day with 100 drivers to transport goods from Camp X to Camp Y and return. The contractor shall provide 2 recovery vehicles for towing disabled vehicles.**

Performance-Based Language

- **The contractor shall provide transportation of goods from Camp X to Camp Y and return. Goods shall be transported in accordance with applicable local laws and Army Regulations. The contractor shall maintain an adequate truck fleet to meet a requirement of 1000 short tons each way per day. The government will provide the contractor with 24 hours notice for the goods to be transported. The contractor shall provide recovery services for the contractor fleet.**

Sample Requirement

- **The government needs a dining facility at Camp X ASAP that is capable of feeding 3000 Soldiers. The Army estimates that to ensure availability of rations to support the ration cycle, a 12-day of supply of rations will need to be maintained. The Army will provide rations.**

Take 10 minutes to write a Performance Work Statement

- **"The contractor shall provide and operate a dining facility at Camp X no later than 30 days of Notice to Proceed. The dining facility shall feed 3000 personnel 3 hot meals per day. Food will be prepared according to the published contingency meal cycle and applicable Army Regulations. The government will provide rations and the contractor shall maintain adequate storage for 12 Days of Supply (DOS) of rations, including cold**

Independent Government Cost Estimate (IGCE)

- ✔ **Customer develops**
- ✔ **Must accompany the requirements package when forwarded to the contracting officer**
- ✔ **IGCE – a means of determining reasonableness of cost**
  - ➤ **Is included in the contract files**
  - **Is an estimate of what the work should cost**
- ✔ **DO NOT SHARE WITH CONTRACTOR**

Funding

- ✔ **Work cannot begin until $ is obligated**
- ✔ **Anti-Deficiency Act compliant**
  - ➤ **Money must be obligated against the cost of the effort**
  - **Cannot commit to more work than the amount obligated**
  - **“Funded period of performance”**
- ✔ **Funding for contingency budget – Probably OMA funding**
- ✔ **Supported unit is responsible for coordinating funding**
- ✔ **How documented?**
  - **Military Interdepartmental Purchase Request (MIPR)**
  - **Theater Support – DA Form 3953**

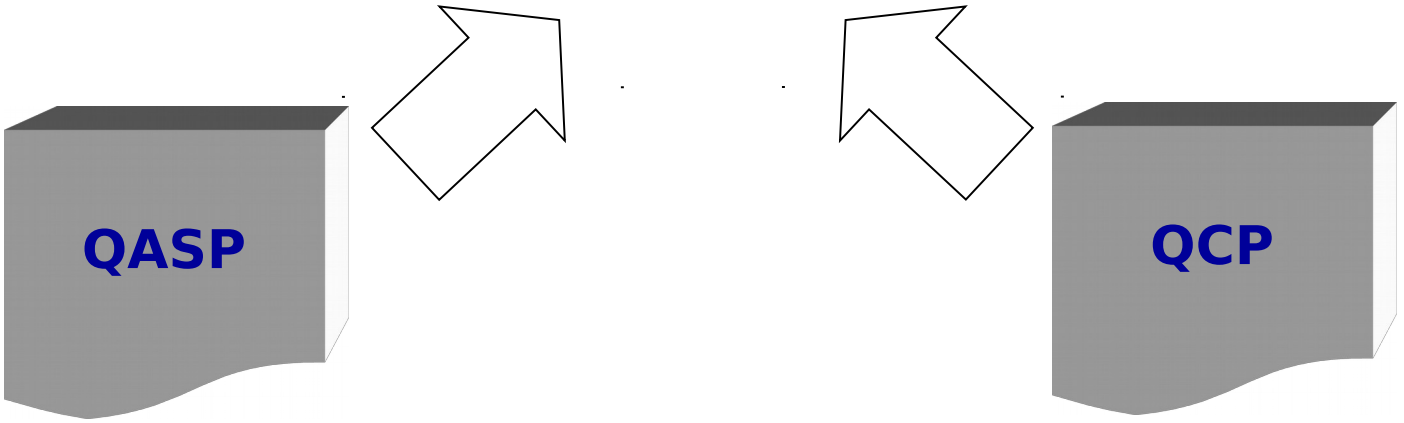
Start Work

- ✔ **Contract Award or Notice To Proceed**
  - ➤ **Tells the contractor to begin work**
  - **Gives a dollar ceiling**
- ✔ **Post Award Conference w/ PCO or Start Work Meeting**
  - **All the players on the same page**
  - **Setting priority of work**
  - **Establish unity of effort**
- ✔ **Troubleshooting**
  - **COR**
  - **Contracting Officer**

Providing Oversight

Monitoring and Inspection

- **Obtain feedback on Contractor Performance**
- **Obtain sufficient data to verify satisfactory performance**
- **Early signs of potential performance problems or breach by either party**
- **Identify deficiencies**



Quality Assurance Surveillance Plan

Quality Control Plan

Review

ELO C

Explain user responsibilities for requesting and overseeing contract support

Review

- ✔ **TLO: Describe User Responsibilities for Contractors Accompanying the Force**

- ✔ **ELO A: Identify the role of contractors in support of Army operations**
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Summary

- ✔ **Contracting can be a formidable logistics enabler**
- ✔ **Effective contract support is dependent on good prior planning**
- ✔ **Use of contracting is not always the right answer**
- ✔ **Everyone has a role in the proper execution of contract support**

TEST